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CC:
Subject: Fw: Inside EPA (1-12) Industry, GOP Fear EPA Fracking Investigations May Preempt Water Study

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----- Original Message -----

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Subject: Inside EPA (1-12) Industry, GOP Fear EPA Fracking Investigations May Preempt Water Study

Industry, GOP Fear EPA Fracking Investigations May Preempt Water Study

Posted: January 12, 2012

Industry and Republican sources are raising concerns that separate EPA investigations into whether hydraulic fracturing operations in Wyoming and Pennsylvania contaminated water supplies may preempt the finding of a broader EPA fracking study, and are also criticizing the differing approaches in the two existing investigations.

Critics of the two investigations fear EPA could use a final finding that fracking caused water contamination to pursue stringent natural gas industry rules. An EPA Region VIII investigation in Pavillion, WY, led to draft findings that injection of fracking fluids into the ground caused contamination within a drinking aquifer, while an EPA Region III investigation in Dimock, PA, appears to be assessing whether fracking or natural conditions harmed water quality.

The investigations are premature, take confusing and sometimes competing approaches, and could prejudge the outcome of a larger EPA study into fracking's impacts on water that is not slated for completion until 2014, industry and GOP critics say. Congress mandated the agency pursue the study in language that was part of EPA's 2010 appropriations law.

EPA's Office of Research and Development (ORD) and Office of Water jointly launched the study last year. Agency officials expect to present early findings in the study later this year. The study consists largely of two prospective and five retrospective case studies where EPA will examine how the natural gas operations in several states interact with drinking water supplies, one of the latter being the groundwater contamination reported in Dimock.

In Dimock, the agency's Region III late last month flagged potential new concerns about the reported contamination of a handful of drinking water wells -- despite saying in November that the water did not pose an immediate threat, a position that won the support of Pennsylvania's Department of Environmental Protection (DEP). EPA has since conducted a door to door survey to area residents. But critics are raising concerns about the effort.

Region III on Dec. 29 began conducting a survey of Dimock residents to fill in information gaps and help determine next steps, saying in a survey to residents -- leaked by the industry group Energy in

Depth -- that the agency could consider taking samples from private drinking wells and doing additional toxicity testing.

EPA's pursuit of fracking investigations in Regions III and VIII is creating confusion over the agency's overall position on fracking studies, how the information gathered by Region III will be used in the larger study and whether EPA headquarters supports the measures taken by the regional office, according to the critics.

An industry source says of the Dimock study, "It puts EPA in an interesting position given that you have two separate entities [Region III and headquarters] working on the same issue and not sharing information."

A Republican source describes the situation in Dimock as "becoming very messy," adding that recent steps taken by Region III appear to have been taken without communication or approval from headquarters.

"Region III and HQ aren't communicating about fracking -- in general -- at all," the source says. "It's not clear whether the recent round of, 'Hey, let's come in and test' [water supplies] is at all related to the hydraulic fracturing study, if it's not, why is EPA there?" asks the GOP source, who also questions EPA's authority for the study.

Critics say Region III has not articulated its authority to continue gathering data in Dimock, which, unlike the Pavillion case, does not involve authority to investigate the contamination under the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA). Part of the aquifer in Pavillion is located on public lands, giving EPA more leeway. "What EPA is doing [in Dimock] is very unclear," the GOP source says.

In a Jan. 5 letter obtained by NPR, DEP Secretary Michael Krancer expresses concern about the survey to Region III Administrator Shawn Garvin, saying it is "clear that EPA is really at the very early stages of its learning curve with respect to Dimock and EPA's understanding of the technical facts and DEP's enforcement history with respect to Dimock is rudimentary."

Krancer urges the agency to better facilitate data-sharing with DEP, given that the state already has extensive information on the incident, and asks for "cooperative, fully-science-based and peer reviewed analysis."

But an EPA spokeswoman tells *Inside EPA*, "We are all working together on the Agency's efforts to better understand the situation in Dimock. We're evaluating next steps including sampling some of the residences' well water. Any decisions made should be regarded as Agency decisions."

Criticism Of Wyoming Study

The scope of the Region VIII investigation in Wyoming is also unclear, industry and GOP sources say, particularly given that the final EPA determination is likely to be published far ahead of the larger two-year study where EPA is expected to analyze the potential for fracking to impact drinking water resources. One GOP source previously told *Inside EPA* that it is hard to imagine that the Wyoming findings, which was jointly conducted under Superfund authority by the agency's research office and Region VIII, would not influence the larger study.

Krancer in his recent letter criticizing the Region III study in Dimock also references the Wyoming investigation, saying, "Suffice it to say that we hope that EPA's efforts here not be marked by the same rush to conclusions and other deficiencies here as it was and continues to be with respect to the Pavillion matter."

In the Wyoming study, EPA has already issued a draft conclusion that fracking likely contributed to the contamination found in deep monitoring wells within a drinking water aquifer in the Wind River formation, near drilling sites operated by the natural gas company Encana Oil & Gas. Region VIII and ORD performed the combined investigation, and ORD is taking comment on the draft findings until Jan. 21.

The agency's draft findings for the Pavillion investigation, released late last year, alarm proponents of fracking because they represent the first EPA documentation that the injection itself -- as opposed to surface spills or other aspects of the drilling process -- could have contaminated groundwater, refuting long-running claims from industry and state regulator that fracking fluids cannot upwardly migrate into drinking water supplies.

In a Jan. 6 letter to EPA's research chief Paul Anastas asking for clarification on how the agency intends to use public comments solicited on its draft report, Encana's John Schopp says there is confusion about the topics on which ORD has requested comment "because of differences between ORD and Region VIII's respective mandates and missions and because the Notice only vaguely describes the purpose of the report as 'to better understand the groundwater hydrology and how the constituents of concern may be occurring in the aquifer.'"

The letter further says, "The question then becomes whether the purpose of this comment period is limited solely to the methodological and data quality issues clearly within ORD's purview related to those topics or is the purpose related to an unstated Region VIII agenda driven by site-specific or other considerations?"

Senate Republican staff recently submitted an inquiry to EPA asking for a record of any communication between ORD and Region VIII in compiling the draft report and is yet to receive a response, the GOP source says.

And Encana has submitted a handful of Freedom of Information Act requests asking for all communications between Region VIII, ORD, and Region III, which conducted some of the tests in Pavillion, but the agency is yet to respond, an Encana source says.

Pavillion Study Controversy

The Pavillion study has created a significant amount of controversy given that it represents the first EPA documentation implicating fracking activities in groundwater contamination, which refutes the industry and state argument that the injection practice cannot penetrate drinking water aquifers.

Industry and Republican lawmakers have listed numerous criticisms about the Dec. 8 draft report, saying EPA's conclusions about the aquifer refute longstanding U.S. Geological Survey assumptions that the formation lacks the necessary geologic conditions to allow fracking fluid to upwardly migrate and noting that the agency is yet to identify a clear pathway for how the contamination occurred. "It's been a very atypical sort of study -- the process hasn't been clear," the GOP source says.

Encana in a Jan. 10 letter to Administrator Lisa Jackson is asking the agency to acknowledge the draft report as a "highly influential scientific assessment" saying that the report is "novel, controversial, or precedent setting," meaning it meeting agency guidelines for being subjected to the highest level of peer review.

Though EPA has said it would have the document peer reviewed, industry says that it is yet to release details of how such a review will be conducted and the outlines of the charge questions for peer reviewers.

In the letter, Encana says, "Knowing that the EPA and the current administration believes that science based on credible evidence should be utilized to drive policy and decision making, Encana Oil & Gas respectfully requests that the EPA ensure a rigorous, external independent peer review be conducted of EPA's draft report, including the conclusions drawn and the quality and precision of the data used." -- *Bridget DiCosmo* (bdicosmo@iwpnews.com)

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